

No. 05-997 FEB 6 - 2006

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In The
Supreme Court of the United States

GLENN R. BEUSTRING, individually and as
an attorney admitted to practice law in the
State of Oklahoma and a member of the
Oklahoma Bar Association,

Petitioner,

vs.

OKLAHOMA BAR ASSOCIATION,
the agent and an official arm of the
Supreme Court of Oklahoma, through its
General Counsel, Dan Murdock,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A lawyer charged under Oklahoma's disciplinary procedure for exercising his constitutional right to free speech is not afforded the opportunity to present a timely constitutional challenge to those charges. The constitutional challenge cannot be presented until the matter is on final review by the Supreme Court of Oklahoma. This review may occur years after the protected speech and subsequent prosecution. In the case of Petitioner, the protected speech and prosecution occurred in 2003, but the case, including Petitioner's constitutional challenges, has not yet been reviewed by the Oklahoma Supreme Court.

I. Should federal courts apply the abstention doctrine developed in *Younger v. Harris*, 401 U.S. 37 (1971), as applied to attorney disciplinary proceedings by *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982), when the state disciplinary procedures do not afford the lawyer a timely opportunity to present constitutional challenges to the charges brought against that lawyer?

II. If abstention is mandated by *Middlesex* in circumstances where a lawyer is deprived of a timely opportunity to raise his constitutional claim, does application of that doctrine conflict with the rule announced in *Dombrowski v. Pfister*, 380 U.S. 479 (1965) and expanded upon by Justice Brennan in *Perez v. Ledesma*, 401 U.S. 82 (1971), that federal jurisdiction is proper when the state procedures "will not assure adequate vindication of constitutional rights"? *Dombrowski*, 380 U.S. at 485.

PARTIES TO THE PROCEEDING

In the courts below, Petitioner, attorney Glenn R. Beustring, sought relief from disciplinary proceedings brought against him to silence him and otherwise deter him from engaging in the exercise of his right to free speech as secured by the First Amendment. The proceedings also violated Petitioner's rights to due process under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Respondent, a Defendant below, is the Oklahoma Bar Association, the agent and official arm of the Supreme Court of Oklahoma, through its general counsel, Dan Murdock.

The Professional Responsibility Tribunal of the Oklahoma Bar Association, through its members, Kenneth L. Delashaw, Jr., Peggy Stockwell, and Neil William McElderry, Jr., was initially named as a defendant. During the pendency of post-judgment proceedings in the district court, the Professional Responsibility Tribunal of the Oklahoma Bar Association was dismissed with prejudice. Pursuant to Sup. Ct. R. 12.6, Petitioner believes that this entity has no interest as a party in the outcome of this Petition.

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OPINIONS AND ORDERS BELOW

On March 1, 2004, the United States District Court for the Western District of Oklahoma entered an order (App. 6-19) abstaining from exercising jurisdiction and dismissing a civil rights action brought by Glenn Beustring. Mr. Beustring, an Oklahoma lawyer, was the subject of state disciplinary proceedings for writing a letter critical of the Oklahoma Supreme Court. On March 15, 2004, Beustring filed a Rule 59(e) motion to vacate the judgment. The district court denied his motion on March 23, 2004 (App. 3-5).

Mr. Beustring filed a Notice of Appeal to the United States Court of Appeals for the Tenth Circuit on March 29, 2004. The Tenth Circuit affirmed the district court in an Order and Judgment entered September 29, 2005, for substantially the reasons and grounds set forth in the district court's opinions. *See Beustring v. Okla. Bar Ass'n*, 143 Fed. Appx. 997 (10th Cir. 2005) (App. 1-2).

Mr. Buestring's subsequent motion for rehearing was denied November 7, 2005 (App. 20-21).

JURISDICTION

This Court has jurisdiction to review on a writ of certiorari the judgment or order in question pursuant to 28 U.S.C. § 1254.

**CONSTITUTIONAL PROVISIONS AND
PROFESSIONAL DISCIPLINARY
RULES INVOLVED**

Petitioner asserts that he is being prosecuted for exercising his First Amendment right to free speech. According to the Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Petitioner also claims that he is being denied due process and equal protection under Oklahoma law as required by the Fourteenth Amendment to the United States Constitution, Section 1, which provides in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The rule barring Petitioner from raising a timely constitutional claim in the proceedings against him is Section 6.4 of the Oklahoma Rules Governing Disciplinary Proceedings, which provides:

The respondent shall within twenty (20) days after the mailing of the complaint file an answer

with the Chief Justice. The respondent may not challenge the complaint by demurrer or motion. In the event the respondent fails to answer, the charges shall be deemed admitted, except that evidence shall be submitted for the purpose of determining the discipline to be imposed.

STATEMENT OF THE CASE

Glenn R. Beustring, a lawyer licensed to practice in Oklahoma, represented the Wilsons in a medical malpractice case filed in the District Court of Tulsa County, Oklahoma (*Wilson I*). The *Wilson* case was tried to a jury, which rendered a verdict in favor of the defendants. Plaintiffs appealed. The Court of Civil Appeals of Oklahoma reversed and remanded the case for new trial because the non-party physician treating the plaintiff made inconsistent statements at trial that the plaintiffs were prevented from rebutting. Plaintiffs had thus been deprived of the opportunity to address the veracity of that physician. On remand (*Wilson II*), Mr. Beustring, as plaintiffs' counsel, attempted to discover information relevant to the treating physician's veracity. Mr. Beustring also learned of, and attempted to discover information regarding, a "unified defense strategy" employed by defense counsel, which entailed structuring a physician's testimony to avoid "cross criticism by defendants" that only works "to the benefit of the plaintiffs." In other words, witness tampering.

Mr. Beustring attempted to obtain discovery relevant to defendants' suborning perjury to fabricate a causation defense and the treating physician's veracity, but was rebuffed by the trial court. Mr. Beustring sought relief by extraordinary writ in the Supreme Court of Oklahoma.

The Supreme Court of Oklahoma granted the plaintiffs limited relief, but, ignoring its precedent, declined to permit discovery on the unified defense/witness tampering issue. Frustrated by the Court's failure to follow its own precedent, an argument presented to the Court a second time in a petition for rehearing, Mr. Beustring wrote a letter to seven Supreme Court Justices. That letter is quoted below verbatim:

Re: *Wilson v. Russell, et al*, No. 98,220 – Denial
of Petition for Rehearing

Dear Justices Opala, Hodges, Lavender, Hargrave, Kauger, Boudreau and Winchester:

Please accept this letter as my resignation from the Oklahoma Bar Association effective sixty (60) days from this date so that I can arrange for the orderly transfer of existing clients to new counsel.

As a lawyer, I am statutorily obligated to respect you. Your denial of the Wilson's Petition for Rehearing leaves me without spiritual or physical ability to fulfill my statutory obligation. ***The facts were before you.*** You cannot indulge yourselves in the "three monkeys" game of choosing to ignore the evil. You should be impeached and not honored.

Your decision denying appropriate relief to victims of medical negligence – in this instance, the Wilsons – is an embarrassment to the "Rule of Law" – a repudiation ***of your duty*** to safeguard the rights of the public under the Oklahoma Constitution, Art. 2, §§6, 7 and 19. In the area of medical negligence law, evil lawyers and their "puppet" judges have flourished under your supervision.

Last Sunday, at church, my mother handed me an index card that said only these words: "To sin by silence when they should protest, makes cowards of men."

Sincerely,

Glenn R. Beustring

OBA #768

cc: Chief Justice C.M. Watt
Justice J. Summers

(Emphasis in original.) The letter was based upon Mr. Beustring's reasonable belief of the truth of the statements contained therein.¹

In direct response to this letter, the Oklahoma Bar Association filed a formal complaint on September 30, 2003, against Mr. Beustring for alleged violations of a number of Oklahoma Rules of Professional Conduct.

Petitioner filed a Complaint in the United States District Court for the Western District of Oklahoma on November 5, 2003, seeking declaratory and injunctive relief pursuant to 28 U.S.C. § 1343(a)(3) and (4) (App. 30-53). Specifically, Petitioner requested that the federal court declare that the state bar complaint was filed in bad faith and without probable cause in retaliation for Mr. Beustring exercising his First Amendment rights and to intimidate him and other similarly-situated Oklahoma lawyers from exercising such rights in the future. Mr.

¹ For instance, Mr. Beustring's statement regarding "puppet judges" was premised in part on a fund-raising letter issued by the medical negligence defense bar, in which the trial court judge had been described as providing "unique justice" to medical negligence defendants.

Beustring also sought a permanent injunction against the Oklahoma Bar Association from taking any further action in the disciplinary proceedings and an award of his fees and costs in the matter. Petitioner's claims were brought pursuant to 42 U.S.C. § 1983. Respondent and the Oklahoma Professional Responsibility Tribunal both filed motions to dismiss requesting that the court abstain from exercising jurisdiction pursuant to *Younger v. Harris*, 401 U.S. 37 (1971), and *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982). After an evidentiary hearing, the district court granted the motions to dismiss and abstained from exercising its subject matter jurisdiction. Following the district court's denial of his timely-filed Rule 59(e) motion to vacate, Mr. Beustring lodged an appeal in the United States Court of Appeals for the Tenth Circuit.

Petitioner contended on appeal that the district court erred in determining that his action did not fall within an exception to the *Younger* and *Middlesex* abstention doctrine. Specifically, Petitioner argued that the "exceptional circumstances" exception applied because Oklahoma's attorney disciplinary procedures do not afford an attorney a timely and adequate opportunity to raise a constitutional challenge.

Separately, Petitioner claimed on appeal that the bad faith and harassment exception to the *Younger* abstention doctrine applied and, pursuant to *Dombrowski v. Pfister*, 380 U.S. 479 (1965), Petitioner should not be required to bear the burden of defending himself in the unconstitutional bar disciplinary proceedings.

The decisions of the district court and the court of appeals are generally described in the "Opinions And